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June 20, 1996

DANNY E. ADAMS

DIRECT LINE (202) 955-9874

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Southwestern Bell Telephone Company's
Comparably Efficient Interconnection Plan
for the Provision of Security Service
CC Docket Nos. 85-229-, 90-623, and 95-20

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION

Dear Mr. Caton:

On behalf of the Alarm Industry Communications Committee, please take notice that today Robert A. Bonifas of Alarm Detection Systems, Inc., Patrick M. Egan of Commonwealth Security Systems, Steve Augustino of Kelley Drye & Warren LLP, and I met with Claudia Pabo, Michelle Carey, and Steven Teplitz of the FCC. The discussion concerned the attached materials.

In accordance with Section 1.1206 of the Commission's rules, an original and one copy of this notice and attachments are provided for inclusion in the public record. Two copies are provided for each of the above docket numbers.

Sincerely,

Danny Adams

Danny E. Adams

Enclosure

cc: Claudia Pabo
Michelle Carey
Steven Teplitz

OTC

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUN 20 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Southwestern Bell Telephone)
Company's Comparably Efficient)
Interconnection Plan for the)
Provision of Security Service)

CC Docket Nos. 85-229, 90-623
and 95-20

To: The Common Carrier Bureau

EX PARTE PRESENTATION OF THE
ALARM INDUSTRY COMMUNICATIONS COMMITTEE

June 20, 1996

WHAT IS THE AICC?

The Alarm Industry Communications Committee ("AICC") is a subcommittee of the Central Station Alarm Association, an industry association for U.L.-listed providers of alarm monitoring services. The AICC's mission is to provide coordination between the alarm industry and the federal government concerning issues affecting the means of communication available to provide alarm monitoring services. The AICC represents the interests of alarm providers before the FCC, other regulatory agencies and the Congress.

AICC members provide the overwhelming majority of alarm monitoring services offered in the United States. Its membership includes a broad cross-section of the alarm industry, constituting ADT Security Systems, Inc.; Holmes Protection Group; Honeywell Protection Services; the National Burglar and Fire Alarm Association; Rollins, Inc.; Wells Fargo Alarm Services; the Security Industry Association and Security Network of America.

AICC has participated extensively over the years in the FCC's *Computer III* proceeding and other Commission proceedings dealing with enhanced services and the alarm monitoring industry.

SUMMARY OF AICC'S POSITION

- The Bureau must interpret Section 275 to the extent necessary to determine if SWBT's proposed activities are lawful
- Section 275 was enacted in response to the BOCs' control over local exchange facilities, which could be used to discriminate against alarm providers or to gain an anticompetitive advantage in the provision of alarm monitoring services.
- Section 275 prohibits a BOC from any involvement in "the provision of alarm monitoring services."
- SWBT's activities in connection with the provision of "SWBT Security Service," even with the modifications made in its Reply, constitute SWBT's being "engaged in the provision of" prohibited alarm monitoring services. Therefore, the Bureau must reject SWBT's CEI plan.

SWBT'S PROPOSED "SECURITY SERVICE"

Taking into account the revisions made in SWBT's Reply, SWBT's proposal includes the following activities:

- SWBT will provide all marketing to SWBT subscribers of CPE and associated alarm monitoring services.
- SWBT plans to require a subscriber to use a monitoring entity pre-selected by SWBT as a condition of receiving SWBT CPE and associated services. Both aspects will be sold as a bundled package.
- SWBT will exercise sole discretion in the selection of an entity to provide remote monitoring functions and will negotiate the amount the entity will receive for providing those functions. The subscriber will have no involvement in the selection of the monitoring entity or in determining its compensation.
- SWBT will bill for both services -- apparently under the name SWBT Security Service -- as a single "lump sum" representing the end user charge for monitoring, CPE and maintenance.
- SWBT will share in the revenues collected for alarm monitoring services. In addition to receiving payment from the subscriber for CPE and maintenance, SWBT will keep the difference between the monitoring charge paid by the customer and the "agreed upon fee" it negotiated with the monitoring entity as the monitoring entity's compensation.

THESE ACTIVITIES VIOLATE SECTION 275

- **SWBT Sub-contracts for Monitoring:** SWBT will select the entity providing monitoring functions and negotiates its compensation for such services. SWBT will retain the right to terminate the association with the monitoring entity. The monitoring entity essentially is SWBT's subcontractor for remote monitoring functions.
- **SWBT Shares Alarm Monitoring Revenues:** SWBT will share in the revenues for alarm monitoring services. SWBT will bill for all activities as a "single lump sum" and keep all but the "agreed upon fee" the monitoring entity agreed to accept from SWBT. The monitoring entity is indifferent to the end user's total charge.
- **SWBT Holds Itself Out as a Monitoring Service Provider:** SWBT appears to intend to market all services under the brand name "SWBT Security Service." SWBT's proposal to state on bills that monitoring is "provided by" the monitoring entity (Reply at 7) is akin to an interexchange reseller identifying its underlying carrier to customers. Further, although SWBT asserts it will not "conceal the identity" of the monitoring entity (Reply at 11), the Bureau does not have before it either proposed marketing materials or sample customer contracts useful in evaluating who the customer will perceive as its service provider.
- **SWBT Has the Incentive to Discriminate:** By partnering with a monitoring entity, SWBT will have the same incentives to discriminate in favor of that

entity or otherwise act anticompetitively as it would have if the monitoring entity were a subsidiary or affiliate. All of the dangers addressed by Section 275 are present in SWBT's proposal

THROUGH THE ABOVE ACTIVITIES, SWBT "ENGAGE[S] IN THE PROVISION OF" PROHIBITED ALARM SERVICES.

SWBT'S CLAIM THAT IT MAY ACT AS A "SALES AGENT" FOR MONITORING SERVICES IS UNTENABLE

SWBT maintains that the Bureau must analyze its activities in piecemeal fashion, rather than as a whole. Specifically, it seeks to avoid Section 275 by claiming that it merely acts as a "sales agent" for a monitoring entity. SWBT's assertion is unsupportable.

- The *Sales Agency Order* did not authorize the BOC's CPE affiliates to market a service the BOCs were prohibited from offering. The Order authorized the marketing of two services -- CPE and basic local exchange services -- both of which the BOCs were allowed to provide (98 F.C.C. 2d at 958). The marketing of "the type of interexchange services offered by such carriers as AT&T" was *not* permitted. (*Sales Agency Reconsideration*, 59 RR2d 309, 319; *see Sales Agency Order*, 98 F.C.C. 2d at 956).
- An entity may not do indirectly that which it is prohibited from doing directly. The Commission would not allow a BOC to act as a "sales agent" for MCI interexchange services or for Lucent's network equipment. It cannot allow a similar evasion of the alarm monitoring restriction here.
- To police the line between "sales agent" activities and the prohibited provision of alarm monitoring services, the Commission would need to undertake a variety of regulatory activities, such as overseeing all contractual relationships between the purported agent and the alarm provider, identifying the scope of permitted agency activities, and developing cost allocation rules, structural or nonstructural safeguards, and other regulations to prevent the BOC from acting anticompetitively or from engaging in the provision of alarm monitoring

services. Congress rejected regulatory safeguards such as these (which it adopted for other services) in favor of a "bright line" blanket prohibition on the BOC "engag[ing] in the provision of alarm monitoring services."

**SWBT'S CLAIM THAT SECTION 275 ISSUES
ARE BEYOND THE SCOPE OF THIS PROCEEDING IS WRONG**

- The Bureau cannot authorize SWBT to engage in an activity prohibited by the Communications Act.
- The *Bell Atlantic CEI Order* did not authorize Bell Atlantic to engage in an unlawful activity. In fact, the Order specifically held that the extent to which Bell Atlantic could provide Internet services on an interLATA basis would be subject to its rules implementing Sections 271 and 272 (¶ 51).

THEREFORE, SWBT'S PROPOSED ACTIVITIES ARE SUBJECT TO
SECTION 275, AND THE BUREAU MUST DETERMINE WHETHER
SWBT'S ACTIVITIES WOULD VIOLATE SECTION 275.